NG KAY THIAN & ANOR. v. REDHILL PAPER CONVERTERS LTD.

[O.C.J. (Wee Chong Jin C.J.) July 28, 1970]

[Singapore — Suit No. 370 of 1968]

Negligence — Injury to workman in factory — Simple machine — Remote possibility of injury — Factories Ordinance, 1958, ss. 21, 22 and 28 — Breach of statutory duty.

The plaintiff was injured at his place of work and as a result his right hand had to be amputated. At the time of the accident he was operating a machine and while operating it his right hand was trapped by the machine. It was alleged that the defendants were negligent and in breach of their statutory duty under sections 21, 22 and 28 of the Factories Ordinance, 1958.

Held: (1) the machine in this case was a simple one and the possibility of injury was a remote one and on the facts the plaintiff's claim at common law must fail;

(2) on the facts the defendants were not in breach of their statutory duties under the Factories Ordinance, 1958. There was adequate instruction and supervision as regards the precautions to be observed in operating the machine. The plaintiff was in a convenient position to operate the starting and stopping devices of the machinery and there were no dangerous parts in the machinery when it was in normal operation.

Cases referred to:-

(1) *Bolton* v. *Stone* [1951] A.C. 850, 858.

(2) *Midland and Low Motor Iron and Steel Co. Ltd.* v. *Cross* [1964] 3 All E.R. 752, 756.

CIVIL SUIT.

K. E. Hilborne for the plaintiffs.

Sachi Saurajen for the defendants.

Cur. Adv. Vult.

Wee Chong Jin C.J.: On 17th October 1967 the first plaintiff, who was then seventeen years old, was injured at his place of work and as a result his right hand was amputated at the level of the lower third of the shafts of the radius and ulna. He had commenced working for the defendants about twelve months before the accident as a sweeper.

In his statement of claim he alleged that at all material times he was employed by the defendants at their factory premises as a sweeper and in the course of his said employment he was on or about 17th October 1967 instructed by the defendants' servants or agents to operate a machine for crushing wood pulp and while operating the machine his right hand was trapped by the machine and injured owing to the negligence and/or breach of statutory duty of the defendants, their servants or agents.

The claim in respect of breach of duty or negligence under the common law is particularised as:

(a) causing or permitting him to operate the said machine by himself when they knew or ought to have known that it could only be safely operated by two persons;

(b) taking no reasonable or any precautions for his safety;

and the claim in respect of breach of statutory duty is particularised as:

(c) in breach of section 28 of the Factories Ordinance, 1958 caused or permitted the first plaintiff to operate the said machine when he had not received a sufficient training in or for such work and as to the dangers likely to arise in connection therewith and the precautions to be observed nor was the first plaintiff under adequate supervision by a person who had a sufficient knowledge and experience of the said machine or process and they therefore exposed the first plaintiff to the dangers of the said machine. Alternatively, they ought to have prevented the first plaintiff from operating the said machine;

(d) in breach of section 21 of the Factories Ordinance, 1958 caused or permitted the first plaintiff to operate the said machine when the same was not securely fenced under sub-section (1) of that section;

(e) failing to provide an efficient device or appliance by which electrical power could be promptly cut off from the said machine contrary to sub-section (2) of section 21;

(f) failing to provide an efficient stopping appliance the control of which was in such a position as to be readily and conveniently operated by the first plaintiff.

The particulars (d), (e) and (f) above were contained in amendments to the statement of claim granted by the court at the commencement of the trial of the action. At the final stages of the trial counsel for the plaintiffs applied to the court to further amend the pleadings to include an allegation that the defendants were in breach of section 22(1) of the Factories Ordinance, 1958.

It is convenient, first, to describe the machine and how it operates. The machine is shown in the photographs which also show the "wood pulp" which is in fact shredded paper or paper sweepings which is fed into the machine to be compressed into a bale of compressed paper. An expert, Mr. Loo Ming, who holds the degree of Master of Science in mechanical engineering, a member of the Institute of Engineers, Singapore and an associate member of the American Society of Mechanical Engineers and is presently a lecturer in the Engineering Faculty, University of Singapore, prepared a schematic or a diagrammatic representation of the working of this machine. He also gave evidence that essentially the machine consists of three sections, the prime mover, the transmission machinery with its control, and the end device or appliance. The prime mover is the electric motor that supplies the energy. The transmission machinery is the portion that is interphased between the prime mover and the end device and its purpose is to convert energy from one form to a form that is suitable for use at the end device. The end device in the case of this machine is the ram that bales the shredded or loose paper. Pressure is supplied by an electric motor to the hydraulic cylinder which moves the ram backwards or forwards. The hydraulic cylinder is controlled by the direction control valve which controls it forward, backward or stops it. The direction control valve is in turn controlled by a lever. A wall mainline switch controls the electric

power to the whole unit and there is a push button switch in the machine which also controls the electric power to the electric motor.

The loose paper is fed into an opening or well in the machine, which opening or well is, according to the expert, part of the end device of this machine. Then the main switch and the motor switch are switched on. The lever which controls the direction control valve is then pulled down and this moves the ram into the well of the machine thereby compressing the loose paper in the well. As a result bits of the loose paper rises and a metal rod is used to press this rising paper down into the well. When the ram has passed a certain part of the whole machine the lever is used to bring the ram backwards to its original position and the whole process, including filling the well with paper, is repeated six or seven times before a bale of compressed paper is produced. The movement of this ram backwards or forwards is comparatively very slow. The evidence is that when there is paper in the well of the machine it moves forward about 1.1/3 inch per second, taking 15 seconds for it to move across the opening of the well and 13 seconds to come back to its original position.

It is clear, therefore, from the evidence and looking at the photographs that this machine is a simple one, easy to operate and capable of being operated safely by one person. In the words of the foreman who gave evidence, "even a child can operate it". The only possible danger to anyone operating it would be if he places his hand in the well of the machine while the ram is moving forward and leaves the hand in the well when the ram has travelled across the whole length of the well in which event the hand would be jammed between the ram and far wall of the well. This was what happened to the first plaintiff and accepting as I do the foreman's evidence that he instructed the first plaintiff, first by demonstration and then by supervision, as to how to operate the machine and of the possible danger of using the hand, instead of the metal rod which was provided and used by him during the demonstration, to press down the rising paper into the well when the ram was moving forwards, I find the first plaintiff's claim at common law must fail.

There is obviously a remote possibility of injury in the use of this machine. This accident shows that but as was said in *Bolton* v. *Stone*: [1]

"Nor is the remote possibility of injury occurring enough. There must be sufficient probability to lead a reasonable man to anticipate it. The existence of some risk is an ordinary incident of life, even when all due care has been, as it must be, taken".

I turn now to deal with the claim that the defendants were in breach of their statutory duty under the Factories Ordinance, 1958. First, it is claimed the defendants were in breach of section 28. I have already indicated that I accept the evidence of the foreman as regards the instruction, supervision and the precautions to be observed when operating the machine and accordingly I find that the defendants were not in breach of section 28.

Secondly it is claimed the defendants were in breach of section 21 of the Factories Ordinance, 1958. This section provides as follows: —

"(1) Every part of the transmission machinery shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced.

(2) Efficient devices or appliances shall be provided and maintained in every room or place where work is carried on by which the power can promptly be cut off from the transmission machinery in that room or place.

(3) Every machine intended to be driven by mechanical power shall be provided with an efficient starting and stopping appliance, the control of which shall be in such a position as to be readily and conveniently operated by the person operating the machine".

The evidence of the expert witness, Mr. Loo Ming, which I accept, indeed there is no evidence to the contrary, disposes of the claim under this section. I also accept the evidence of the foreman and on his evidence, coupled with the photographs, it is clear that anyone operating this machine would place himself in the position as shown in the photographs. In that position his right hand would be within easy reach and he could conveniently operate either the lever which controls the movement of the ram or the push button switch on the machine which controls the electric power to the electric motor of the machine.

Finally I must deal with the last minute attempt to amend the plaintiffs' pleadings to bring in a claim under section 22 of the Factories Ordinance, 1958. On the evidence it is sought to plead that the defendants were in breach of section 22(1) which provides as follows: —

"(1) Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced:

Provided that, in so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation be secured by means of a fixed guard, the requirements of this subsection shall be deemed to have been complied with if a device is provided which automatically prevents the operator from coming into contact with that part".

This application is resisted by the defendants. I am not inclined to accede to it first, because it was made at a very late stage of the proceedings and secondly and more importantly because it would deprive the defendants of the opportunity of calling evidence to meet this particular allegation.

In any event as the plaintiffs are relying on the evidence before the court and are not calling further evidence in support of this allegation I would hold that they cannot succeed under section 22(1) on the evidence before me. The submission put forward on behalf of the plaintiffs is, as I understand, that the mouth of the well should have been fitted with a device or guard, namely, a removable lid so that when the ram is in motion, the lid would automatically prevent the operator of the machine from coming into contact with the ram. In my opinion this submission can only succeed if the ram is a dangerous part of the machine within the meaning of section 22(1). It seems to me obvious that the actual well or opening into which the loose paper is fed could in no circumstances be said to be a dangerous part of the machine. It also seems to me obvious that the ram by itself is not a

dangerous part of the machine. The question is whether or not the ram becomes a dangerous part of the machine when the machine is in normal operation. I think not because in my opinion the ram does not undoubtedly become dangerous when the machine is in normal operation performing the mechanical work which the machine is specifically designed to achieve. I come to this conclusion adopting the words of Lord Evershed (dealing with a different problem from the present case) in *Midland and Low Moor Iron and Steel Co., Ltd.* v. *Cross*[2], where he said:

"As it seems to me, the question whether it can properly be said that some part of a piece of machinery is dangerous must depend on considering whether such danger exists and arises from the normal operation of the machine, that is, from the purposes of the mechanical work which the machine is specifically designed to achieve; and if such a part becomes undoubtedly dangerous from such normal and projected operation, then it follows that such part of the machine is a dangerous part within the meaning of section 14(1)".

However much I sympathise with the first plaintiff for the serious and permanent injury he has suffered as a result of this accident, I am of the opinion that the defendants are not in law responsible for the accident and accordingly the claim is dismissed with costs.

Claim dismissed.

Solicitors: *Hilborne & Co.; Drew & Napier.*

PUBLIC PROSECUTOR v. GURSEVAR SINGH & ANOR.

[A.Cr.J. (Chua J.) October 19, 1970]

[Singapore — Magistrate's Appeal No. 95 of 1970]

Criminal Law and Procedure — Sentence — Public interest — Inadequacy of sentence.

Penal Code, s. 379 — Theft of plants from public garden — Sentence.

The accused had been convicted of three offences of theft of plants belonging to the Public Works Department and were fined $50 on each charge. The value of the plants on the first charge was $10, on the second charge $6 and on the third charge $50. The Public Prosecutor appealed alleging that the sentences were inadequate.

Held: the learned magistrate in deciding to be lenient to the respondents had failed to consider the public interest, which should be the first and foremost consideration. The sentences in this case were manifestly inadequate and must be increased to $100 on the first charge, $100 on the second charge and $200 on the third charge.

Case referred to:-

(1) *R.* v. *Ball* (1951), 35 Cr. App. R. 164 at p. 165.

MAGISTRATE'S CRIMINAL APPEAL.

Isaac Paul Retnam (Deputy Public Prosecutor) for the appellant.

David Marshall for the respondent.

Chua J.: This is an appeal by the Public Prosecutor against the sentences imposed by a magistrate on the two respondents on conviction for three offences of theft of plants punishable under section 379 of the Penal Code read with section 34 of the Penal Code. The value of the plants on the first charge was $10, on the second charge $6 and on the third charge $50. Each respondent was fined $50 on each charge.

At the trial the respondents were represented by counsel and they pleaded guilty to the three charges. The brief facts given by the prosecution, as recorded by the magistrate, were as follows:

"Complainant is P.C. 8851 attached to R.W. Division. On 15.5.70 at 11 p.m. to 16th May at 7 a.m. complainant and another police officer were placed on static duty at Woodlands Road 12½ m/s. to keep observation of plants planted by P.W.D.

On 16.5.70 at 1.20 a.m. the two police officers saw 2 persons in a motor car SK. 9185 driven slowly at Woodlands 12½ m/s. Driver was accused No. 2. Accused No. 1 was the passenger. The police officers saw the car stopping by the side of road divider near some plants.

First accused got down from the car and seen pulling out an Arancasia plant from the road divider. Police approached and arrested him. Second accused saw this and drove off. The police officers with assistance of a member of public drove towards Bukit Panjang police station. On their way, they saw motor car SK 9185 parked by the side of the road. They saw second accused throwing out some plants from the vehicle.

Attempts were made by the police officers to stop the car. She drove off. Whilst driving away she was seen to be throwing away some more plants.

At Bukit Panjang police station, the police officers reported.

A short while later, second accused surrendered. The car was examined and found to contain mud and sand at the rear seat.

Police investigations started. They went to 12½ m/s. Woodlands where they discovered 5 Acalypha Wilkesiana plants, 3 Dieffen Bachia Rudolf Roehrs plants.

Both accused subsequently led police to Holland Road in front of G.H.Q. Tanglin where they pointed out 2 empty flower pots where 5 Acalypha Wilkesiana plants were stolen. They also took the police to Cluny Road in front of Botanical Gardens and pointed out 3 empty pots where the 3 Dieffen Bachia Rudolf Roehrs plants were stolen.

All the plants belonged to P.W.D. Both accused subsequently admitted in their cautioned statements the theft of the plants."

The facts given were admitted by the two respondents and they were convicted on all the three charges.

Counsel for the respondents addressed the court in mitigation. The record of the magistrate reads:

"*Mitigation: Mr. Advani on behalf:*

The man and his fiancee shortly to be married. First accused is a flight engineer. They had just acquired a home to be matrimonial home. They did this on spur of the moment. They had been co-operative after arrests. I don't know the future of my clients. Your honour can guess.

My clients say they are prepared to make restitution for full value of the plants if any are damaged. I invite your honour to take into account there are 3 counts. They are not criminals but just stupid."

The magistrate fined each of the respondent $50 on each charge. At the request of the prosecution, the magistrate ordered the car seized by the police to be returned to the second respondent.

The magistrate in his grounds of decision gave his reasons for passing those sentences.

The magistrate said:

"I was aware that the offence of theft of public property is a serious one. On the other hand there were several